A

KAMALANATHAN PONNUMBALAN

v.

TENAGA NASIONAL BHD

B

HIGH COURT MALAYA, JOHOR BAHRU
KP GENGADHARAN J
[CIVIL SUIT NO: MT(3)22-585-1998]
7 MARCH 2006

C ***PUBLIC UTILITIES:*** *Electricity - Charges - Refusal of consumer to pay - Supplier disconnected supply of electricity - Whether a breach of contract by supplier - Defamation - Damages - Electricity Supply Act 1990, ss. 30(1), 32*

D ***CONTRACT:*** *Breach - Action for damages - Public utilities - Supplier disconnected supply of electricity after refusal by consumer to pay charges - Whether a breach of contract by supplier - Electricity Supply Act 1990, ss. 30(1), 32*

E ***TORT:*** *Damages - Defamation - Public utilities - Supplier disconnected supply of electricity after refusal by consumer to pay charges - Whether notices to disconnect and acts of disconnection considered defamatory to consumer - Electricity Supply Act 1990, ss. 30(1), 32*

F G H I This was an action by the plaintiff against the defendant – at all material times the supplier of electricity to the plaintiff's residence, pursuant to a contract between the plaintiff and the defendant's predecessor in title, Lembaga Letrik Negara – claiming damages for breach of contract and defamation. The defendant had sent a bill to the plaintiff for the sum of RM1,248.60, being the estimated amount due for electricity consumed from 4 September 1997 to 5 February 1998. The plaintiff objected to the bill in writing but the defendant continued to send numerous bills requesting payment and notices threatening to cut the supply of electricity to the plaintiff's premises. The defendant did, in fact, disconnect and reconnect the supply of electricity to the plaintiff's premises a number of times, and continued issuing the plaintiff monthly bills requesting payment for the overdue amount. The defendant denied any liability to the plaintiff, invoking and relying on s. 30(1) of the Electricity Supply Act 1990 ('Act') to contend that the plaintiff ought to have referred the matter to the Director General, and that his action was not maintainable.

Held (allowing the plaintiff's claim):

(1) The meaning of s. 30(1) of the Act is plain and clear enough; the defendant's argument was misconceived, if not misleading, and without merit as the said section did not apply to the matters in issue which were the subject matter of this action. The bill for electricity consumed by the consumer, and *a fortiori,* the payment that was claimed must be based on the actual meter reading as laid down and required by s. 32 of the Act. The defendant did not comply with this requirement. It repeatedly sent the notices and sought payment of the sum of RM1,248.60 as the estimated sum payable by the plaintiff, in spite of the plaintiff's repeated objections and contrary to the requirements prescribed by the Act that the bill is to be based on the meter reading. The defendant disconnected the electricity supply and restored the same after the plaintiff protested, more than once. Thus, the defendant's actions were clearly in breach of the contract with the plaintiff and wrongful. (paras 8, 9, 10, 11 & 12)

(2) The defendant's staff had prepared the notices and they would have read the contents, which were to the effect that the plaintiff owed the defendant and wrongfully or wilfully refused to pay the sum due. The disconnection of electricity would have attracted the attention of, and been noticed by, the plaintiff's neighbours and maid, who would have assumed that the plaintiff was unable to pay for the electricity consumed and/or had refused to pay what was due and owed by the him to the defendant. Hence, the notices and acts, taken together and in the context of the matters under consideration, were defamatory. Although the plaintiff had not adduced evidence of damages suffered by reason of the defendant's breach of contract and did not call any witnesses in respect of the claim for damages for defamation and exemplary damages, he and his family would have been subject to inconvenience and loss of amenities when the electricity was disconnected in breach of the contract. (paras 14, 15 & 16)

(3) The plaintiff's objections to the defendant were not unfounded, and the proper and lawful course of action that the defendant ought to have adopted in this case was for it to have sued the plaintiff for the amount allegedly owed and allowed the court to adjudicate upon the matter. The

defendant chose not to do so, and its repeated acts of arbitrarily disconnecting the supply of electricity, despite the plaintiff's protests, were in wilful and wanton disregard of the statutory provisions. In short, the defendant's acts were arbitrary and coercive, and this was a case where exemplary damages were justified. (para 17)

Per curiam:

(1) Public utility authorities should exercise restrain, and refrain from exercising their powers or acting in a manner which is arbitrary, coercive and unlawful when seeking to collect the payments alleged to be owed by the consumer, especially where the consumer's objections to the bill are well-founded, as was the case in this instance. (para 19)

[Defendant to pay sum of RM25,000 as damages to plaintiff.]

Legislation referred to:
Electricity Supply Act 1990, ss. 30(1), 32

For the plaintiff - M/s Yeo Ng Fan & Assoc
For the defendant - M/s Haris Azmi & Assoc

Reported by Suresh Nathan

JUDGMENT

KP Gengadharan J:

[1] The plaintiff, a practising lawyer, is the co-owner of the dwelling property bearing address No. 11-D, Jalan Petrie, 80100 Johor Bahru, Johor (residence). He and his family reside thereat. The defendant was at all material times and still is the supplier of electricity utility to the plaintiff's residence, pursuant to a contract in April 1972 between the plaintiff and the defendant's predecessor in title, then known as Lembaga Letrik Negara.

[2] The plaintiff had carried out renovations to his residence. The renovation works commenced in October 1995 and were completed in September 1997. The plaintiff and his family had moved out of their residence when the renovation works were carried out and resumed occupation on completion of the

renovation works at the end of September 1997. On 29 November 1997 the defendant fixed a new meter in the residence to record the supply of electricity as the old meter was apparently faulty.

[3] In March 1998 the defendant sent a bill to the plaintiff at his residence for the sum of RM1,248.60 as being due for electricity consumed. The plaintiff objected to the bill in writing. His objection read:

> Saya merujuk kepada bil untuk tempoh 5/2/98 hingga 4/3/98 sebanyak RM385.94 yang telah saya jelaskan hari ini. Saya terkejut apabila mendapati terdapat caj pelbagai sebanyak RM1,248.60.
>
> Sila tuan beri bukti bagaimana tuan mendapat jumlah ini.
>
> Beban ini adalah atas tuan dan tuan tidak boleh meminta pengguna membayar apa-apa yang tuan anggap sesuai.
>
> Saya telah memberikan tuan maklumat-maklumat dan butir-butir yang relevan.

[4] Inspite of the plaintiff's letter of objection to the defendant, the following events, which are not in dispute, took place.

17.3.1998	After the Plaintiff objected to being charged this sum of RM1,248.60, the Defendant wrote to Plaintiff explaining that the sum of RM1,248.60 was their estimation of the electricity consumed for the period between 4.9.1997 to 5.2.1998 and the Defendant proceeded to set out the Defendant's computation for the period 4.9.1997 to 5.2.1998.
20.3.1998	The Plaintiff wrote to the Defendant disagreeing.
26.3.1998	The Defendant issues 'Notis Pemotongan dated 26.3.1998'.
27.3.1998	The Plaintiff sends letter dated 27.3.1998 to the Defendant to object.
10.4.1998	The Plaintiff wrote to the Defendant to object to the Defendant's statement that the Plaintiff is in arrears.

Apr 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
May 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
June 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
July 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
28.7.1998	The Defendant issues the 'Notis Pemotongan dated 28.7.1998'.
29.7.1998	The Defendant cuts the supply of electricity to residence.
29.7.1998	The Defendant reconnects the supply after Plaintiff complains.
Aug 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
15.8.1998	The Defendant again issues a further 'Notis Pemotongan dated 15.8.1998.
17.8.1998	The Defendant again cuts the supply of electricity to 11-D.
17.8.1998	The Defendant reconnects the electricity supply after complaints by the Plaintiff.
Sept, 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".

7.9.1998	Again the Defendant issues a 'Notis Pemotongan dated 5.9.1998'.
7.9.1998	The Plaintiff obtains an injunction from the High Court at Johor Bahru against the Defendant to restrain the Defendant from cutting the supply of electricity to 11-D.
Oct., 1998	The Defendant issues to the Plaintiff a bill stating that a sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
14.9.1998	The Plaintiff issues the writ of summons against the Defendant.
From October 1998 to June 1999	The Defendant continues to issues to the Plaintiff bills stating that the sum of RM1,248.60 is overdue. The amount of RM1,248.60 is stated under the heading "Tunggakan".
29.6.1999	The Defendant issues another "Notis Pemotongan dated 26 September 1999"
30.6.1999	The Plaintiff's solicitors issues a letter to the Defendant's solicitors objecting to this notice dated 26.9.1999.
29.6.1999	Notwithstanding the objections and the court injunction, the Defendant proceeds to disconnect the electricity supply to 11-D.
5.7.1999	The Plaintiff's solicitors send letter to Defendant's solicitors.
4.12.2000	The Plaintiff himself sends a letter to the Defendant raising his objections to the Defendant continuing to publish the statement that his account is overdue.
From July, 1999 to May 2000	The Defendant continues to issue to the Plaintiff monthly bills stating that the sum of RM1,248.60 is overdue. The amount of RM1,251.60 is stated under the heading 'Tunggakan'.

[5] It is to be observed that the meter in the plaintiff's residence had been replaced and installed by the defendant sometime in November 1997 and this meter was and still is the property of the defendant, the notices were sent after the plaintiff had resumed

A occupation on completion of the renovation works and the payment sought was, by the defendant's own admission, the estimated amount for the period from 4 September 1997 to 5 February 1998.

B **[6]** The plaintiff, by this action, is claiming damages for the following:

1) Breach of contract.

2) Defamation.

C

[7] The defendant denies any liability to the plaintiff and the plaintiff's entitlement to the reliefs sought. Defendant's counsel has also invoked and relies on s. 30(1) of the Electricity Supply Act 1990 to contend that the plaintiff ought to have referred the D matter to the Director General of Electricity Supply and this action is not maintainable. It is therefore necessary for me to deal with this argument before I proceed further.

[8] For completeness, I reproduce the said s. 30 of the Act which reads as follows:

E

> 30. (1) Any party to any dispute under sections 24 to 29 regarding a supply of electricity may refer the dispute to the Director General for his decision.
>
> F (2) The Director General shall determine the dispute and make an order accordingly:
>
> Provided that in a case where the Director General thinks fit the dispute may be determined by an arbitrator to be appointed by him.
>
> G (3) The practice and procedure to be followed in the determination of any dispute under subsection (2) shall be such as the Director General may consider appropriate.
>
> (4) Pending the determination of any dispute arising under H sections 24 to 29 between a licensee and a person requiring a supply of electricity, the licensee shall continue to give the supply of electricity until the determination of the dispute.
>
> (5) Any order under subsection (2) may include a provision requiring either party to pay the costs or expenses incurred by I the Director General or the arbitrator, as the case may be, in determining the dispute.

[9] The meaning of the said section is plain and clear enough. The argument of defendant's counsel is misconceived, if not misleading, and without merit. The said section does not apply to the matters in issue which is the subject matter of this action.

[10] It is my finding that the Bill for electricity consumed by the consumer, and a fortiori, the payment that is claimed must be based on the actual meter reading as laid down and required by s. 32 of the Act. This section reads:

> 32 (1) Where a consumer is to be charged for his supply of electricity whether wholly or partly by reference to the quantity of electricity supplied, the supply shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter.
>
> (2) The meter shall be provided by the licensee, whether by way of sale, hire or loan.

[11] The defendant did not comply with this requirement. The defendant repeatedly sent the notices and sought the payment of the sum of RM1,248.60 as the estimated sum payable by the plaintiff inspite of the plaintiff's repeated objections and contrary to the requirements prescribed by the Act that the Bill is to be based on the meter reading. The defendant disconnected the electricity supply and restored same after the plaintiff protested, more than once.

[12] Having made the observations and findings as set out above, I now proceed to deal with the reliefs the plaintiff is seeking by this action.

[13] The defendant's actions were clearly in breach of the contract with the plaintiff and wrongful. I accept the submission of the plaintiff's counsel on this point.

[14] Are the defendant's letters/notices, and actions in disconnecting the electricity supply, defamatory. It cannot be denied that the notices were prepared by the staff and they would have read the contents. The contents are to the effect that the plaintiff owed the defendant and the plaintiff wrongfully or willfully refused to pay same. The disconnection of electricity would have attracted the attention of, and noticed by, the plaintiff's neighbours and the plaintiff's maid. All these persons, in the normal course, would have assumed that the plaintiff was unable

to pay for the electricity consumed and/or had refused to pay what was due and owed by the plaintiff to the defendant. I hold that the said notices and acts taken together and in the context of the matters under consideration are defamatory.

[15] The plaintiff has not adduced evidence of damages suffered by reason of the breach of the contract by the defendant. The plaintiff also did not call any witnesses in respect of the claim for damages for defamation and exemplary damages.

[16] However, I accept that the plaintiff and his family would have been subject to inconvenience and loss of amenities when the electricity was disconnected until it was reconnected, more than once, in breach of the contract.

[17] The plaintiff did not sit idly and ignore the notices when he received same. He objected and made representations to the defendant. His objections were not unfounded. The proper and lawful course of action that the defendant ought to have adopted in this case was for the defendant to have sued the plaintiff for the amount allegedly owed and allow the court to adjudicate the matter. The defendant chose not to do so and instead resorted to arbitrarily disconnect the electricity supply. The defendant's repeated acts of disconnecting the electricity supply, inspite of the plaintiff's protests and representations to the defendant and the injunction, were in willful and wanton disregard of the statutory provisions the defendant ought to have complied with when computing the electricity consumed and billing the plaintiff and infringement of the plaintiff's rights. In short, the defendant's acts were arbitrary and coercive. I hold that this is a case where exemplary damages are justified.

[18] Having regard to all the facts and circumstances, I allow the plaintiff's claim for damages for breach of contract, damages for defamation and exemplary damages and order that the defendant pay a sum of RM25,000 as damages to the plaintiff. I also award costs of this action to the plaintiff, to be taxed. As for the counter-claim, the defendant has failed to prove the counter-claim. I dismiss the counter-claim and make no order as to cost in respect thereof.

[19] In conclusion, I would observe that public utility authorities should exercise restrain and refrain from exercising their powers or act in a manner which is arbitrary, coercive and unlawful when seeking to collect the payments alleged to be owed by the consumer, especially where the consumer's objections to the bill are well founded, as was the case in this instance between the plaintiff and the defendant.